

§5.15

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with respect to a specific dispute resolution will be posted on the hydroelectric page of the Commission's Web site.

(i) No later than 25 days following the notice of study dispute, the potential applicant may file with the Commission and serve upon the panel members comments and information regarding the dispute.

(j) Prior to engaging in deliberative meetings, the panel shall hold a technical conference for the purpose of clarifying the matters in dispute with reference to the study criteria. The technical conference shall be chaired by the Commission staff member of the panel. It shall be open to all participants, and the panel shall receive information from the participants as it deems appropriate.

(k) No later than 50 days following the notice of study dispute, the panel shall make and deliver to the Director of the Office of Energy Projects a finding, with respect to each information or study request in dispute, concerning the extent to which each criteria set forth in §5.9(b) is met or not met, and why, and make recommendations regarding the disputed study request based on its findings. The panel's findings and recommendations must be based on the record in the proceeding. The panel shall file with its findings and recommendations all of the materials received by the panel. Any recommendation for the potential applicant to provide information or a study must include the technical specifications, including data acquisition techniques and methodologies.

(l) No later than 70 days from the date of filing of the notice of study dispute, the Director of the Office of Energy Projects will review and consider the recommendations of the panel, and will issue a written determination. The Director's determination will be made with reference to the study criteria set forth in §5.9(b) and any applicable law or Commission policies and practices, will take into account the technical expertise of the panel, and will explain why any panel recommendation was rejected, if applicable. The Director's determination shall constitute an amendment to the approved study plan.

§5.15 Conduct of studies.

(a) *Implementation.* The potential applicant must gather information and conduct studies as provided for in the approved study plan and schedule.

(b) *Progress reports.* The potential applicant must prepare and provide to the participants the progress reports provided for in §5.11(b)(3). Upon request of any participant, the potential applicant will provide documentation of study results.

(c) *Initial study report.* (1) Pursuant to the Commission-approved study plan and schedule provided for in §5.13 or no later than one year after Commission approval of the study plan, whichever comes first, the potential applicant must prepare and file with the Commission an initial study report describing its overall progress in implementing the study plan and schedule and the data collected, including an explanation of any variance from the study plan and schedule. The report must also include any modifications to ongoing studies or new studies proposed by the potential applicant.

(2) Within 15 days following the filing of the initial study report, the potential applicant shall hold a meeting with the participants and Commission staff to discuss the study results and the potential applicant's and or other participant's proposals, if any, to modify the study plan in light of the progress of the study plan and data collected.

(3) Within 15 days following the meeting provided for in paragraph (c)(2) of this section, the potential applicant shall file a meeting summary, including any modifications to ongoing studies or new studies proposed by the potential applicant.

(4) Any participant or the Commission staff may file a disagreement concerning the applicant's meeting summary within 30 days, setting forth the basis for the disagreement. This filing must also include any modifications to ongoing studies or new studies proposed by the Commission staff or other participant.

(5) Responses to any filings made pursuant to paragraph (c)(4) of this section must be filed within 30 days.

(6) No later than 30 days following the due date for responses provided for

in paragraph (c)(5) of this section, the Director will resolve the disagreement and amend the approved study plan as appropriate.

(7) If no participant or the Commission staff files a disagreement concerning the potential applicant's meeting summary and request to amend the approved study plan within 30 days, any proposed amendment shall be deemed to be approved.

(d) *Criteria for modification of approved study.* Any proposal to modify an ongoing study pursuant to paragraphs (c)(1)–(4) of this section must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a demonstration that:

(1) Approved studies were not conducted as provided for in the approved study plan; or

(2) The study was conducted under anomalous environmental conditions or that environmental conditions have changed in a material way.

(e) *Criteria for new study.* Any proposal for new information gathering or studies pursuant to paragraphs (c)(1)–(4) of this section must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a statement explaining:

(1) Any material changes in the law or regulations applicable to the information request;

(2) Why the goals and objectives of any approved study could not be met with the approved study methodology;

(3) Why the request was not made earlier;

(4) Significant changes in the project proposal or that significant new information material to the study objectives has become available; and

(5) Why the new study request satisfies the study criteria in § 5.9(b).

(f) *Updated study report.* Pursuant to the Commission-approved study plan and schedule provided for in § 5.13, or no later than two years after Commission approval of the study plan and schedule, whichever comes first, the potential applicant shall prepare and file with the Commission an updated study report describing its overall progress in implementing the study plan and schedule and the data col-

lected, including an explanation of any variance from the study plan and schedule. The report must also include any modifications to ongoing studies or new studies proposed by the potential applicant. The review, comment, and disagreement resolution provisions of paragraphs (c)(2)–(7) of this section shall apply to the updated study report. Any proposal to modify an ongoing study must be accompanied by a showing of good cause why the proposal should be approved as set forth in paragraph (d) of this section. Any proposal for new information gathering or studies is subject to paragraph (e) of this section except that the proponent must demonstrate extraordinary circumstances warranting approval. The applicant must promptly proceed to complete any remaining undisputed information-gathering or studies under its proposed amendments to the study plan, if any, and must proceed to complete any information-gathering or studies that are the subject of a disagreement upon the Director's resolution of the disagreement.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61742, Oct. 30, 2003]

§ 5.16 Preliminary licensing proposal.

(a) No later than 150 days prior to the deadline for filing a new or subsequent license application, if applicable, the potential applicant must file for comment a preliminary licensing proposal.

(b) The preliminary licensing proposal must:

(1) Clearly describe, as applicable, the existing and proposed project facilities, including project lands and waters;

(2) Clearly describe, as applicable, the existing and proposed project operation and maintenance plan, to include measures for protection, mitigation, and enhancement measures with respect to each resource affected by the project proposal; and

(3) Include the potential applicant's draft environmental analysis by resource area of the continuing and incremental impacts, if any, of its preliminary licensing proposal, including the results of its studies conducted under the approved study plan.

(c) A potential applicant may elect to file a draft license application which